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1.	Office of Petitions	USPTO	703 872 9306	

Total number of pages including this page: **3****In re Application of:** Glenn RIGGS et al.**Serial No.:** 09/915,301**Filing Date:** July 27, 2001**U.S. Patent No.:** 6,915,268**Issue Date:** July 5, 2005**Title:** TRANSPORT LOGISTICS SYSTEMS & METHOD**Please find attached:** 1. **REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : Glenn E. RIGGS et al.
Application No. : 09/915,301
Filing Date : July 27, 2001
U.S. Patent No. : 6,915,268
Issue Date : July 5, 2005
Title : TRANSPORT LOGISTICS SYSTEMS AND METHODS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Sir:

Applicants gratefully acknowledge the Decision on Application for Patent Term Adjustment mailed on Jun 6, 2005 in response to the Petition for Patent Term Adjustment filed on February 28, 2005. A decision on applicants' request for patent term extension on the basis of the Office taking in excess of three years to issue the patent was held in abeyance pending the actual patent date and applicants were permitted to file a written request for reconsideration on this basis only without payment of an additional fee. Consequently, applicants now request a patent term extension of up to 337 days due to the failure to issue the patent within 3 years.

The application was filed on July 27, 2001. The date that is three years from the filing date is July 27, 2004. The patent issue date is July 5, 2005. The number of days between July 27, 2004 and July 5, 2005 is 343. Taking into account the undisputed delay of 6 days, applicants submit that the proper patent term extension for failure to issue the patent within three years is 337 days. Applicants acknowledge that this patent term extension overlaps with the previously determined patent term extension of 66 days and does not result in any additional patent term adjustment. See 35 USC 154(b)(1)(B) and 35 USC 154(b)(2)(A).

The Office previously decided that the patent term extension for the patent will be reduced by 49 days because of the Information Disclosure Statement filed on June 9, 2003. While applicants dispute the reduction, it is recognized that the suggested request for reconsideration was limited to the patent term adjustment for Office failure to issue the patent within 3 years. Applicants thus refrain from commenting further on the disputed reduction and acknowledge that the actual amount of the resulting patent term extension granted by the Office will be no greater than 288 days (337 days minus 49 days) because of the reduction.¹

On the other hand, applicants' successful appeal is relevant since the patent term extension for failure to issue the patent within 3 years may not include any time consumed by appellate review by the Board of Patent Appeals and Interferences. 35 USC 154(b)(1)(B)(ii). The Office previously concluded that there was no decision by the Board (see Decision, top of page 6). Assuming arguendo that this is correct, applicants submit there was likewise no appellate review by the Board since a Restriction Requirement and Office Action were mailed by the Examiner on March 12, 2004 and August 23, 2004, respectively, without any Examiner's Answer being transmitted to the Board, and there was no Order or direct involvement of the Board. It is noted that 37 CFR 1.703(b)(4) states that the time period from the Notice of Appeal to the Restriction requirement or Office Action should be excluded from the patent term extension (and thus reduce the patent term extension by 122 days or 316 days, respectively). However, applicants respectfully submit that the Office rule incorrectly interprets the statute and impermissibly purports to deny applicants the patent term extension that is due when taking more than 3 years to issue a patent in the absence of appellate review by the Board.

Dated: July 5, 2005

Respectfully submitted,



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¹ Applicants reserve the right to file an appeal of the patent term extension pursuant to 35 USC 154(b)(4).